

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

RBS
UNITED STATES OF AMERICA,

vs.

ALTON COLES a/k/a NASEEM COLES,
et al.,

Philadelphia, PA

CR-05-440

February 28, 2008

Defendant. By MICHAEL J. LLORET Dep. Clerk

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE R. BARCLAY SURRICK
UNITED STATES DISTRICT COURT JUDGE

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I N D E X

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(Court in Session)

THE CLERK: United States District Court for the Eastern District of Pennsylvania is now in session, the Honorable R. Barclay Surrick presiding.

THE COURT: Have a seat.

COUNSEL: Good morning, Your Honor.

MR. LLORET: Thank you.

MR. WARREN: Good morning, Your Honor.

MR. LLORET: Good morning.

THE COURT: All right. Counsel, we have two notes from the jury. Yesterday at the end of the day we discussed one of those notes, and we also discussed the indictment that had gone out with the jury.

With regard to the note that the jury would like to have the testimony of Thais Thompson, the grand jury testimony, I spoke with Mr. Lloret and Mr. Bresnick and Mr. Hetznecker yesterday at about five o'clock or 4:30. I'm going to play that testimony for the jury if the jury requests it. You put your respective positions on the record yesterday, but it seems to me that if the jury wants to hear the questions and the answers that were read in court, we can do it. Mr. Finney has made arrangements to have that done if the jury requests it. So I will ask them whether they want to hear that again, and if they do, we will play it for them.

With regard to the second issue, the -- Count 191 of

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1 the indictment and the language, there were four lines that
2 were in the redacted copy that was sent back to the jury that
3 had no been read during the course of the testimony. I am
4 redacting those four lines from the indictment that goes back
5 to the -- with the jury. It was not read during the course of
6 the trial, and I think it would be inappropriate to have it in
7 the indictment that they had the opportunity to review. So
8 that's -- we're going to deal with that issue in that fashion.

9 With regard to the note that they've sent out this
10 morning dealing with their deliberations and their votes and
11 when or how they should go about dealing with each other as it
12 relates to the verdict, what I intend to do, counsel, is this.
13 I intend to tell them that it is entirely up to them how they
14 will conduct their deliberations. However, the verdict of a
15 jury is final when that verdict is rendered in open court, when
16 it is recorded in open court, and all jurors have indicated
17 their agreement to it, and I think that that will solve the --
18 their problem.

19 MR. MCMAHON: I agree with that, Judge, and I have no
20 question, but as to their specific question, are we -- I mean,
21 you can look at the last part, "Are we allowed to go back and
22 revote or not, because we already...", the answer to that is
23 yes, real simply to their question is yes, they are allowed to
24 do that.

25 THE COURT: That's what I'm essentially telling

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1 them --

2 MR. MCMAHON: I know.

3 THE COURT: -- that the verdict of the jury is final
4 when they all agree in open court.

5 MR. MCMAHON: And I understand that answers it for us
6 as lawyers, but their specific question is are we allowed to go
7 back and revote or not, because we -- that's their question,
8 and the answer -- I suggest you give that response that you
9 suggested and then say the specific answer to your question is
10 yes.

11 MR. WARREN: They're -- they're -- they have signed
12 and dated the verdict, and what they want to know is is the
13 fact that we have signed and dated the verdict, does that
14 preclude us from going back and revoting. The answer to that
15 one is no.

16 MR. MCMAHON: So --

17 MR. WARREN: I would request that they be told that
18 directly.

19 MR. MCMAHON: Right, but the answer specifically to
20 their question -- to answer the question that they specifically
21 asked, are we allowed, the answer is yes.

22 MR. WARREN: Whether or not it's signed or dated --

23 THE COURT: All right. Mr. Lloret or Mr. Bresnick,
24 do you have anything you want to state?

25 MR. LLORET: No, Your Honor. I think that

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1 Your Honor's suggestion is perfectly appropriate and addresses
2 the question, but I don't disagree with Mr. McMahon or
3 Mr. Warren's analysis that -- I mean, it can alternatively be
4 answered quite distinctly that, of course, they can manage it
5 as they see fit.

6 THE COURT: All right.

7 MR. BRESNICK: One other question, Your Honor. It
8 was raised during the conference call yesterday with
9 Mr. Hetznecker that he would have the night to think about
10 whether he wanted a specific instruction to be given to the
11 jury.

12 MR. HETZNECKER: No, I do not.

13 MR. BRESNICK: Okay.

14 THE COURT: All right. All right. We will have the
15 jury come in and we'll answer their questions.

16 MR. LLORET: Your Honor, the transcript list with the
17 dates and times have been provided to the clerk. I don't know
18 whether that's been given to the jury.

19 THE COURT: That has not. I was waiting for counsel
20 to be here so that we could all agree that that can go out.

21 MR. WARREN: Judge, I had the opportunity to look at
22 it. It's fine.

23 THE COURT: All right.

24 MR. WARREN: All right.

25 MR. LLORET: I've given all counsel a copy as well.

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1 (Pause)

2 THE CLERK: Please rise.

3 (Jury in)

4 THE COURT: Okay. Ladies and gentlemen, have a seat.
5 First of all, ladies and gentlemen, yesterday we made up a list
6 of the transcripts, giving the dates and the times. That --
7 you requested the ability to have that information. We have --
8 that has been prepared, and we will send it out with you.

9 You have asked, ladies and gentlemen, whether you can
10 have any grand jury testimony that was admitted for Thais
11 Thompson. If you will remember, the grand jury testimony was
12 read to you. Mr. Bresnick read the questions. Ms. --
13 Agent Horay read the answers. If you wish to hear that
14 testimony again or those questions and the answers, we can
15 provide that for you. We can play back exactly what happened
16 here in the courtroom.

17 So, ladies and gentlemen, it is entirely up to you.
18 If you want to hear that testimony, we can provide it for you.
19 When you go back, make the decision as to whether you want to
20 hear it, and we will bring you back out and play it for you if
21 you wish.

22 You have provided a note this morning with regard to
23 your deliberations and how they should be conducted. I want to
24 indicate this to you, ladies and gentlemen. It's entirely up
25 to you how you conduct your deliberations. I also want to

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1 indicate to you that the verdict of a jury is final when that
2 verdict is rendered in open court and recorded in open court
3 with all jurors indicating their agreement.

4 So in response to your question, "Are we allowed to
5 go back and revote or not because we already signed and
6 dated...", the answer to that question is yes. You can do --
7 you certainly can do that. That's entirely up to you. Okay?

8 I think that answers all your questions up to now.
9 If you have any additional questions, let me know, but when you
10 go out, if you want to hear the testimony with regard to the
11 grand jury and Thais Thompson, let Mr. Finney know, and we will
12 set it up for you immediately. Mr. Finney?

13 THE CLERK: Please rise.

14 (Jury out)

15 THE COURT: Okay. Counsel, we'll wait a few minutes
16 and find out what the pleasure of the jury is.

17 (Recess)

18 THE CLERK: Please remain seated. Court is in
19 session.

20 THE COURT: Counsel, the jury is requesting to hear
21 that questions and answers played back.

22 COUNSEL: How long is it, Judge? Do you know how
23 long it is?

24 THE COURT: About 35, 40 minutes.

25 COUNSEL: Okay.

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1 COUNSEL: Can I use the restroom before we start
2 that? Are we bringing them in? I'll wait

3 THE COURT: The jury is coming --

4 COUNSEL: All right. Then fine.

5 MR. WARREN: I've got him, Judge.

6 (Jury in)

7 THE COURT: Okay. Have a seat, ladies and gentlemen.
8 You have requested that we play back the -- the testimony with
9 regard to the grand jury and Thais Thompson, and we're prepared
10 to do that. Go ahead. Turn it up.

11 (Testimony played back)

12 THE COURT: That's it. Okay. Ladies and gentlemen,
13 we're going to let you go back out and continue your
14 deliberations.

15 THE CLERK: Please rise.

16 (Jury out)

17 THE COURT: All right. Counsel, you're all on 15
18 minutes call.

19 MR. LLORET: Thank you, Your Honor.

20 MR. MCMAHON: Is there any period of time, like from
21 12:30 to 1:30 or something or --

22 THE COURT: Excuse me?

23 MR. MCMAHON: Is there any period of time, from like
24 12:30 or to 1:30 if we're at lunch, or is it always 15 minutes?

25 THE COURT: It's 15 minutes. I don't know what the

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1 jury is --

2 MR. MCMAHON: Okay.

3 THE COURT: -- going to be doing. They may --

4 MR. MCMAHON: I thought maybe if they were eating
5 lunch. Okay.

6 THE COURT: They may have another question.

7 MR. MCMAHON: Fine.

8 (Recess)

9 THE CLERK: Please be seated. Court is in session.

10 THE COURT: Counsel, the jury has requested to come
11 early tomorrow and to leave a little bit early also. They want
12 to come in at 8:15 and leave at 4:15. So --

13 MR. MCMAHON: Great.

14 THE COURT: -- we're going to accommodate that
15 request.

16 MR. LLORET: What -- what time should we be here or
17 ready, Your Honor?

18 MR. WARREN: 15 minutes notice.

19 THE COURT: If you're here on 15 minutes call, that's
20 fine. For those of you who live out of the area, you should
21 get here certainly by 9:30 anyway.

22 MR. LLORET: Very well, Your Honor. Thank you.

23 THE COURT: Okay, Mr. Finney.

24 (Pause)

25 THE CLERK: Please rise.

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(Jury in)

THE COURT: Okay. Have a seat, ladies and gentlemen. It's now five o'clock. We're going to recess for the day. You have requested to start early tomorrow and to be excused a little earlier. So what we're going to do is ask you to be back tomorrow at 8:15. When you're in the jury room, all of you, 12 of you, you can start your deliberations. The alternates, we want you back at 8:15 also, and we will have you at your jury room upstairs.

Again, ladies and gentlemen, don't discuss the case with anyone. Don't let anyone discuss it with you. Don't do any independent investigation. Don't read anything about it. Don't listen to anything about it, and most importantly, don't talk among yourselves until you're back in the jury room ready to start your deliberations tomorrow. Okay?

We'll begin at 8:15. We will recess at 4:00 or 4:15. So you will have a full day to deliberate, and, of course, if you reach a verdict before that time, we will take the verdict. Okay?

See you tomorrow at 8:15.

THE CLERK: Please rise.

(Jury out)

MR. MCMAHON: Judge, I spoke to my client. I have a matter in New York, Brooklyn, New York tomorrow, Federal Court in Brooklyn, New York tomorrow morning. I have someone from my

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1 office will be totally covered, same 15 minute call. I've
2 talked it over with my client. It's the same person who helped
3 pick the jury when I was here before, and he has no objection
4 to that. So I'll give all the right numbers to --

5 THE COURT: All right. Mr. Baukman, you have no
6 problem --

7 MR. BAUKMAN: Yeah.

8 THE COURT: -- with that?

9 MR. BAUKMAN: That's fine.

10 THE COURT: All right. In addition, Mr. McMahon, you
11 are slated to go on a vacation.

12 MR. MCMAHON: Saturday.

13 THE COURT: I don't know what is -- will happen with
14 the jury tomorrow, but if they're back here next week
15 deliberating, have you made arrangements for that?

16 MR. MCMAHON: Well, I will -- yes. I will have made
17 arrangements for that. I will. Yeah. The same person will be
18 available who works for me. That person will be --

19 THE COURT: And is that agreeable to your client?

20 MR. MCMAHON: Yeah. That's fine.

21 THE COURT: Mr. Baukman, you're --

22 MR. BAUKMAN: Yes.

23 THE COURT: -- satisfied with that? Okay. All
24 right. We'll see you tomorrow.

25 MR. MCMAHON: Thank you.

1 MR. LLORET: Thank you, Your Honor.

2 (Court Adjourned)

3 * * * * *

4 C E R T I F I C A T I O N

5 I, Maureen Emmons, court approved transcriber,
6 certify that the foregoing is a correct transcript from the
7 official electronic sound recording of the proceedings in the
8 above-entitled matter.

9
10 Maureen Emmons

Date: 04/21/08

11 MAUREEN EMMONS

12 DIANA DOMAN TRANSCRIBING
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